Office Supreme Court, U.S.
FILED
FEB 9 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 809

MILTON M. KARPEL,
Defendant and Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent.

JURISDICTIONAL STATEMENT

MORRIS LAVINE,
Suite 620 Bartlett Building
215 West 7th Street
Los Angeles 14, California
Attorney for Appellant.

WESTERN PRINTING CO., WHITTIER—OX 8-1722

TABLE OF CASES AND AUTHORITIES CITED

Cases

	Page
Connally v. Gen. Construction Co., 269 US 385, 70 L. ed. 322	4, 12
Ex parte Lange, 18 Wall (85 US 163) 21 L. ed. 872	4
Green v. U.S., 355 US 184; 2 L. ed. 121, 199	4
Lanzetta v. New Jersey, 306 US 451, 83 L. ed. 888	4, 12
Musser v. Utah, 333 US 95, 92 L. ed. 562	4, 12
Sealfon v. U. S., 332 US 575	12
U.S v. Cohen Grocery Co., 255 US 81, 68 L. ed. 516	4
Williams v. U.S., 341 US 92, 95 L. ed 774	4
Winfers v. New York, 333 US 507, 92 L. ed. 840	4
Winters v. U. S., 333 US 507	12

Authorities

Business & Professions Code	
Section 6125	2, 3, 4, 7, 10, 12
Code of Civil Procedure, Section 1209	5
Constitution of the United States, 14th Amendment	
Title 28, Section 1357 (2) and (3)	2
Art. 12, Section 12	5
Art. 12, Section 4	11
Penal Code	
Section 654	5, 1
Section 484	10
Rules of the Supreme Court of the United States	
Rule 33 and 15	1
Rules on Appeal, Rule 13, par. 2	1

IN THE

Supreme Court of the United States

October Term, 1962

No.....

MILTON M. KARPEL,
Defendant and Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent.

JURISDICTIONAL STATEMENT

Pursuant to Rule 33 and Rule 15, Rules of the Supreme Court of the United States, the appellant herewith files his jurisdictional statement required by paragraph 2 of Rule 13, Rules on Appeal.

(a) There are no printed copies of the opinion in the official reports. A copy of the orders of the Appellate Department of the Superior Court of the State of California is attached hereto and made a part hereof.

(b) The following is a concise statement of grounds on which jurisdiction of the Court is invoked:

(i) This is an *appeal* from the judgments of the Superior Court, Appellate Department, State of Cali-

fornia, affirming the judgment of the Municipal Court of Los Angeles Judicial District, convicting the appellant of practicing law in the State of California in violation of Section 6125 of the Business & Professions Code of the State of California.

(ii) The judgment of the Appellate Department of the Superior Court was rendered on July 17, 1962. Petition for rehearing and application for the court to refer the case to the District Court of Appeal was denied on August 1, 1962. A notice of appeal was duly and regularly filed in the Appellate Department of the Superior Court on October 22, 1962 and the record prepared and forwarded to this Court within 60 days thereafter.

(iii) The constitutional and statutory provisions believed to confer juri diction on this Court are the Fourteenth Amendment to the Constitution of the United States and Title 28, Section 1257 (2) and (3), reading as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . .
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute . . . of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The statute specifically drawn in question as to its constitutionality is Section 6125 of the Business & Professions Code of the State of California, reading as follows:

"No person shall practice law in this State unless he is an active member of the State Bar."

It is a misdemeanor to violate this statute.

It is contended that the statute fails to define what constitutes the practice of law and is therefore too vague, indefinite and uncertain to constitute a penal statute.

Also drawn in question is the constitutionality of the procedure by which a defendant was being twice punished for the same offense, constituting double jeopardy, and whether a punishment for contempt of court, being criminal in its nature, exhausts the remedy to punish again for the same transaction and whether the party is once in jeopardy or whether the contempt judgment is res judicata.

(iv) Cases believed to sustain jurisdiction:

U.S. v. Cohen Grocery Co., 255 US 81, 65 L. ed 516
Musser v. Utah, 333 US 95, 92 L. ed. 562
Winters v. New York, 333 US 507, 92 L. ed. 840
Williams v U.S., 341 US 97, 95 L. ed. 774
Lanzetta v. New Jersey, 306 US 451, 83 L. ed. 888
Connally v. Gen. Construction Co., 269 US 385, 70 L. ed. 322
Green v. U.S., 355 US 184; 2 L. ed. 121, 199
Ex parte Lange, 18 Wall (85 US 163) 21 L. ed. 872.

(v) The constitutional provisions and statutes involved are:

1. The Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Section 6125, Business & Professions Code of the State of California:

> "No person shall practice law in this State unless he is an active member of the State Bar."

3. Section 654, Penal Code of the State of California:

> "Acts Made Punishable By Different Provisions of This Code. An act or omission which is made punishable in different ways by different provisions of this Code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in Sections 648, 667, and 668, the punishments therein prescribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury."

4. Article 12, Section 4, Constitution of the State of California:

> "The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be used, in all courts, in like cases as natural persons."

5. Section 1209, Code of Civil Procedure of the State of California:

> "The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolvent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the pace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings;

"3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

"4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

"5. Disobedience of any lawful judgment, order, or process of the court;

"6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

"7. Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

"8. Any other unlawful interference with the process or proceedings of a court;

"9. Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness;

"10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a com-

munication from a party or other person in respect to it, without immediately disclosing the same to the court;

"11. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

"No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

(c) Questions presented by the appeal:

1. Whether Section 6125 of the Business & Professions Code of the State of California, inherently and as construed and applied in this case, is unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States in its due process clause and its equal protection clauses.

2. Whether the petitioner is denied due process of law and the equal protection of the laws in being refused to appear for his corporation, wholly owned by himself and his wife.

3. Whether he has been placed in double jeopardy and is being punished twice for the same transaction where the trial judge in the civil action to get an entertainment license for his corporation found him in contempt of court in appearing for his corporation, wholly owned by himself and his wife, and fined him $500 and thereafter he was prosecuted criminally for the same transactions and sentenced to spend 15 days in jail and placed on probation for 2 years and whether such procedure placed him in double jeopardy in violation of the Constitution and laws of the United States.

4. Whether the defendant was deprived of his day in court when the case was based, in part, upon a record of a police board hearing in which he was not confronted with the witnesses and did not have a right to cross-examine them and whether such procedure denied him due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. Whether petitioner was denied speedy trial as guaranteed by Article 1, Section 13 of the Constitution of California and whether such denial constituted denial of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

6. Whether the defendant, who is an officer of the corporation whose stock is wholly owned by de-

fendant and his wife, may appear in behalf of and in defense of that corporation without being guilty of a crime, to-wit, practicing law without a license.

(d) Statement of the facts:

Milton M. Karpel was an attorney at law, practicing law for approximately 19 years in the East. He lost his New York license by disbarment. He did not have a license to practice law in California.

The defendant and his wife came to California and formed a corporation called DONAL, INC. and were the sole stockholders of this corporation which went into the cafe business and sought an entertainment permit.

Mr. Karpel appeared before an administrative hearing officer and the Board of Police Commissioners regarding a report of Sgt. Masterson a hearing coordinator for the Police Commission (R.T. 19).

The hearings before the Police Commission are conducted by a department representative who does not need to be an attorney, and the respondents in these hearings can represent themselves or by counsel (R.T. 20-21). Mr. Karpel appeared regarding the DONAL, INC. matter. Mr. Karpel was an officer of the corporation, which was of interest in this matter (R.T. 24). Thereafter, Mr. Karpel appeared in the Courtroom of Judge Gordon Files on a petition for a writ to review the actions of the Board of Police Commis-

sioners in denying the Corporation in which he and his wife were the sole stockholders an entertainment permit.

At that time, it was called to the attention of Judge Files that Mr. Karpel was not admitted to the State Bar in California.

Judge Files cited him for contempt for practicing law without a license and fined him $500. Thereafter, the present complaints were filed by the city attorney, charging the defendants criminally with violations of Section 6125 of the Business and Professions Code in Counts I, II, III and IV for the same acts and in violation of Section 484 (petty theft) of the Penal Code in Count V because of discussions of a financial problem with a Mrs. Boomhower after defendant's son had told her that his father was a lawyer (R.T. 49) and his agreement to prepare bankruptcy papers for her.

The defendant was thereafter tried for a crime upon the same transaction for which Judge Files had fined him $500 and which ended in a conviction as to Counts I, II, III and IV of the complaint and conviction as to Count V for petty theft by false pretense, the transaction with Mrs. Boomhower. The court then sentenced the defendant to 90 days in jail, suspended to serve the first 15 days in jail and probation for 2 years thereafter. The Appellate Department of the Superior Court reversed Counts III and V (the petty theft and Boomhower transactions) and sustained

Counts I, II and IV and appellant was later committed for the 15 days of his 90 day sentence, the balance of which still pends and on which he is on probation for a period of 2 years.

The questions of due process of law were raised in the opening brief on appeal in the Appellate Department of the Superior Court, Criminal No. A-5080, in oral argument, and on petition for rehearing and were denied by the court.

The questions were raised as follows on appeal to the Appellate Department of the Superior Court of California:

It was contended that the defendant had a constitutional right to appear in behalf of Donal, Inc. and, as the sole ~~owner~~ with his wife of all the stock, had a constitutional right under the Fourteenth Amendment to appear personally and protect his and her property interest in the corporation without being guilty of a crime. Any statute which deprives an individual of the right to appear and defend a corporation in which he and his wife own all the stock and which is, in effect, their alter ego violates Article 12, Section 4 of the Constitution of California and the Fourteenth Amendment to the Constitution of the United States in both its due process clauses and its equal protection of the law clauses. Individuals are allowed to appear in California for corporations in the Small Claims Court.

The fine imposed by Judge Files after hearing on the matter was res judicata and exhausted the power of the court to try and punish the defendant again for the same transaction (*Sealfon v. U.S.*, 332 U.S. 575). The trial and accusation of the defendant again placed the defendant in double jeopardy and violated the provisions of Section 654 of the Penal Code of California.

The defendant was denied fair trial guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Section 6125 of the Business & Professions Code is unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States, inherently and as construed and applied in this case, in that it fails to define what constitutes practice of the law. It also deprives a person of protecting his own stock and property interest in a Corporation whose stock is wholly owned by himself and his wife.

Lanzetta v. New Jersey, 306 U.S. 451;
Connally v. Gen. Construction Co., 269 U.S. 385;
Musser v. Utah, 333 U.S. 95;
Winters v. U.S., 333 U.S. 507.

(e) The questions here are substantial since the right to practice law for one's self or through an officer of a wholly family owned corporation are fundamental rights and the limitations which a State may impose upon that right within the limits of due process

of law and equal protection of the laws, are important. In this day, when many persons form corporations which are either wholly owned or of which they are total officers, the rights and limits thereof should be defined by this Honorable Court and protected under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, appellant prays that this Honorable Court reverse the judgments below, and order them dismissed.

Respectfully submitted.

MORRIS LAVINE,
Attorney for Appellant.

APPENDIX "A"

APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,	)	Superior Court No.
Plaintiff and Respondent,	)	CR A 5080
vs.	)	Trial Court
MILTON M. KARPEL,	)	No. 153243
Defendant and Appellant.	)	

ORDER DENYING REHEARING AND DENYING CERTIFICATION

[Filed Aug. 1 1962, WILLIAM G. SHARP, County Clerk. By J. MacGREGOR, Deputy.]

The petition of appellant for a rehearing, or in the alternative for certification to the District Court of Appeal, after judgment of this court on appeal in the above-entitled case, having been filed and having been duly considered,

Said petition is hereby denied.

Dated August 1, 1962

BY THE COURT.

SWAIN
Presiding Judge

HULS
Judge

APPENDIX "B"

IN THE APPELLATE DEPARTMENT
OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA;	)	Superior Court No.
Plaintiff and Respondent,	)	CR A 5080
vs.	)	Trial
MILTON M. KARPEL,	)	Court
Defendant and Appellant.	)	No. 153243

ON APPEAL from the MUNICIPAL COURT of the Los Angeles Judicial District State of California, Howard H. Schmidt, Judge.

[Filed July 17, 1962, WILLIAM G. SHARP, County Clerk. By J. MacGREGOR, Deputy.]

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

'It is ORDERED and ADJUDGED that the judgment made and entered in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in the above entitled cause be and

WITNESS my hand and seal of the Court, affixed
s 23rd day of January, 1963.

LLIAM G. SHARP, County Clerk and Clerk of
Superior Court of the State of California, in and
the County of Los Angeles.

By

J. MacGREGOR,

Deputy.

the same is hereby affirmed as to Counts I, II and IV and reversed as to Counts III and V.

July 17, 1962

BY THE COURT.

SWAIN
Presiding Judge

HULS
Judge

SMITH
Judge

I, WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that the foregoing is a true copy of the original judgment entered by said Court in the above entitled cause on the 17th day of July, 1962, and now remaining of record in this Court.

WITNESS my hand and seal of the Court, affixed this 23rd day of January, 1963.

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By

J. MacGREGOR,
Deputy.

LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
MAR 8 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 809

MILTON M. KARPEL,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Motion to Affirm the Judgment or Dismiss This Appeal.

ROGER ARNEBERGH,
City Attorney,
PHILIP E. GREY,
Assistant City Attorney,
WM. E. DORAN,
Deputy City Attorney,
Room 40-P, City Hall,
Los Angeles 12, California,
Attorneys for Appellee.

SUBJECT INDEX

PAGE

Statement 2

Argument 4

I.

Appellant was not placed twice in jeopardy because he had been held in contempt of court for the same act for which he was convicted of violation of Section 6125 of the California Business and Professions Code 4

II.

California's statute declaring no person shall practice law unless he is an active member of the State Bar is definite and certain, and a valid penal statute 6

III.

Appellant, as a layman, does not have a constitutional right to appear and represent in legal matters a corporation in which he and his wife are the only shareholders 7

IV.

Appellant was given his day in court and a speedy trial 9

V.

The Supreme Court of the United States should not take jurisdiction to review a judgment where no opinion was delivered by the highest state court, and where such judgment is sustainable on non-federal grounds 10

Appendix A:

Section 6125, Business and Professions Code of the State of California ..... App. p. 1

Appendix B:

Section 1016 of the Penal Code of the State of California ..... App. p. 2

Section 1017 of the Penal Code of the State of California ..... App. p. 3

TABLE OF AUTHORITIES CITED

CASES	PAGE
Aberdeen Bindery v. Eastern States etc. Co., 166 Misc. 904, 3 N. Y. S. 2d 419	7
Bennie v. Triangle Ranch Co., 73 Colo. 586, 216 Pac. 718	7
Black & White Operating Co. v. Grosbart, 107 N. J. L. 63, 151 Atl. 630	8
Brock v. North Carolina, 344 U. S. 424	5
Cary & Co. v. F. E. Saterlee & Co., 166 Min. 507, 208 N. W. 408	8
Clark v. Austin, 340 Mo. 467, 101 S. W. 2d 977	8
Culpeper Natl. Bank v. Tidewater Imp. Co., 119 Va. 73, 89 S. E. 118	7
Finox Realty Corp. v. Lippman, 163 Misc. 870, 296 N. Y. S. 945	7
J. T. Whalen, Inc. v. Pritzert, 167 Misc. 471, 3 N. Y. S. 2d 418	7
Kankakee Drainage Dist. v. Commissioners, 29 Ill. App. 86	7
MacKenzie v. Angle, 82 Cal. App. 2d 254, 186 P. 2d 30	6
Mortgage Comm. v. Great Neck Imp. Co., 162 Misc. 416, 295 N. Y. S. 107	7
New Jersey Photo Eng. Co. v. Carl Schonert & Sons, 96 N. J. Eq. 12, 122 Atl. 307	8
Nispel v. Western Union R.R. Co., 64 Ill. 311	7
Nixon, Ellison & Co. v. Southwestern Ins. Co., 47 Ill. 444	7
Osborn v. Bank of United States, 9 Wheat. (22 U. S.) 738, 6 L. Ed. 204	8
Paradise v. Nowlin, 86 Cal. App. 2d 897, 195 P. 2d 867	7
People v. Alyidrez, 158 Cal. App. 2d 299, 322 P. 2d 557	6

PAGE

People v. Barry, 153 Cal. App. 2d 193, 314 P. 2d 531, cert. den. 355 U. S. 956 5

People v. Garcia, 166 Cal. App. 2d 141, 333 P. 2d 69 5

People v. Ring, 26 Cal. App. 2d Supp. 768, 70 P. 2d 281 6

Roth v. United States, 354 U. S. 476 6

State v. Passaic Co. Agr. Soc., 54 N. J. L. 260, 23 Atl. 680 8

State Bank v. Bell, 5 Blackf. (Ind.) 127 7

Stembridge v. State of Georgia, 343 U. S. 541 10

Union Pacific Ry. Co. v. Horney, 5 Kan. 340 8

RULES

Revised Rules of the United States Supreme Court, Rule 16 1

STATUTES

California Business and Professions Code, Sec. 6125 2

California Penal Code, Sec. 484 2

California Penal Code, Sec. 657 4

California Penal Code, Sec. 658 4

California Penal Code, Sec. 1016 5

California Penal Code, Sec. 1017 5

United States Constitution, Fourteenth Amendment 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.....

MILTON M. KARPEL,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Motion to Affirm the Judgment or Dismiss This Appeal.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the judgment of the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles, rendered and entered on July 17, 1962, be affirmed, or that the appeal taken therefrom to this Court be dismissed on the ground that the federal question is so unsubstantial as not to warrant further argument, and upon the further ground that the said judgment appealed from rests upon an adequate non-federal basis.

Statement.

This is a direct appeal from a final judgment entered on July 17, 1962, by the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

Appellant was charged in a verified complaint, filed in the Municipal Court of the Los Angeles Judicial District, with four counts of violation of Section 6125 of the Business and Professions Code of the State of California (Appx. A), practicing law without a license, and a fifth count of violation of Section 484 of the California Penal Code, petty theft. Counts I through IV, charging the practice of law without a license, alleged violations on four separate dates: November 6, 1961, November 17, 1961, October 18, 1961, and December 5, 1960, in that order. The jury returned guilty verdicts on all of the five counts.

Briefly, the evidence disclosed that as to Count I appellant engaged in the practice of law by preparing and filing a notice of petition for writ of mandate [Pltf. Ex. 3; R. T. p. 15, line 20].[1] The evidence presented on Count II showed appellant's practice of law before the Superior Court of the State of California, for the County of Los Angeles, Department 65 [Pltf. Ex. 1; R. T. p. 10, line 6]. The evidence introduced as to Count III established appellant's prac-

[1] R. T. indictates Reporter's Transcript in its original page numbering.

tice of law before the Police Commission of the City of Los Angeles. The evidence on Count IV established appellant's practice of law by advising and accepting payment for acting as an attorney in a bankruptcy proceeding. [R. T. p. 45, line 1, to p. 67, line 21]. Count V involved the alleged theft of the money paid for the purported legal services in the bankruptcy proceeding.

On the appeal to the Appellate Department of the Superior Court respondent did not oppose the reversal of the judgment as to Count III of the complaint (Respondent's Brief on Appeal, p. 9, line 32), and conceded error in instruction as to Count V (Respondent's Brief on Appeal, p. 8, line 1). The Appellate Department of the Superior Court, without opinion, reversed as to Counts III and V, and affirmed as to the remainder.

Contrary to the statement appearing at the bottom of page 10 of appellant's jurisdictional statement, the count constituting the "Boomhower transaction," that is, appellant's practice of law by advising and accepting payment for acting as an attorney in a bankruptcy proceeding, was not reversed. This was established as the violation constituting Count IV of the complaint. It must be emphasized that, of the three counts affirmed on appeal by the Appellate Department of the Superior Court, only Count II presents the circumstances which appellant terms double jeopardy.

ARGUMENT.

I.

Appellant Was Not Placed Twice in Jeopardy Because He Had Been Held in Contempt of Court for the Same Act for Which He Was Convicted of Violation of Section 6125 of the California Business and Professions Code.

Appellant was held in contempt of court by Judge Gordon L. Files, then of the Superior Court of the State of California, for the County of Los Angeles, for practicing law before that court without having been admitted to practice in California [Pltf. Ex. 1, admitted R. T. p. 10, line 6, and appearing in R. T. p. 158, line 23, to p. 164, line 26]. The appearance before Judge Files was also the act constituting the violation alleged in Count II of the complaint. Because of the provisions of Sections 657 and 658 of the Penal Code, such does not constitute double jeopardy in California.

Section 657 of the California Penal Code provides:

> "A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt." (Enacted 1872, Deering's California Codes).

Section 658 of the California Penal Code provides:

> "When it appears, at the time of passing sentence upon a person convicted upon indictment that such person has already paid a fine or suffered an imprisonment for the act of which he

stands convicted, under an order adjudging it a contempt, the Court authorized to pass sentence may mitigate the punishment to be imposed, at its discretion." (Enacted 1872, Deering's California Codes).

Furthermore, it is the law of California that a plea of once in jeopardy is a separate plea and must be entered in the minutes of the court (California Penal Code Sections 1016 and 1017; Appx. B).

Neither appellant's jurisdictional statement nor the docket of the Municipal Court of Los Angeles Judicial District indicate that the special plea of once in jeopardy was ever entered.

Under California law, failure to interpose a plea of once in jeopardy in the trial court effects a waiver of such plea and it cannot be raised and considered for the first time on appeal (*People v. Garcia*, 166 Cal. App. 2d 141, 333 P. 2d 69). A plea of not guilty does not raise the issue of former jeopardy (*People v. Barry*, 153 Cal. App. 2d 193, 314 P. 2d 531; certiorari denied, 355 U. S. 956).

Certainly the California statutes and procedures have not subjected appellant to that kind of double jeopardy so acute and shocking that it constitutes a violation of due process of law (*Brock v. North Carolina*, 344 U. S. 424).

II.

California's Statute Declaring No Person Shall Practice Law Unless He Is an Active Member of the State Bar Is Definite and Certain, and a Valid Penal Statute.

The phrase "practicing law" or its equivalent, "the practice of law," has long had a sufficiently definite meaning throughout this country to be given a place in both constitutional and statutory law without further definition.

People v. Ring, 26 Cal. App. 2d Supp. 768, 70 P. 2d 281.

As stated in *Roth v. United States*, 354 U. S. 476, 491:

> "This Court however, has consistently held that lack of precision is not itself offensive to the requirements of due process. . . . 'The constitution does not require impossible standards;' all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . .' *United States v. Petrillo*, 332 U. S. 1, 7, 8, 91 L. Ed. 1877, 1883, 67 S. Ct. 1538."

Furthermore, appellant's jurisdictional statement does not indicate nor does the record appear to disclose that this point was raised at the trial level.

It is a general rule of California appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal.

People v. Alvidrez, 158 Cal. App. 2d 299, 322 P. 2d 557;

MacKenzie v. Angle, 82 Cal. App. 2d 254, 186 P. 2d 30.

III.

Appellant, as a Layman, Does Not Have a Constitutional Right to Appear and Represent in Legal Matters a Corporation in Which He and His Wife Are the Only Shareholders.

A natural person may represent himself and present his own case to the court although he is not a licensed attorney. A corporation is not a natural person. It is an artificial entity created by law and as such it can neither practice law nor appear or act in person. Out of court it must act in its affairs through its agents and representatives, and in matters in court it can act only through licensed attorneys. A corporation cannot appear in court by an officer who is not an attorney, and it cannot appear *in propria persona*.

Paradise v. Nowlin, 86 Cal. App. 2d 897, 898, 195 P. 2d 867, citing: *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 Pac. 718; *Mortgage Comm. v. Great Neck Imp. Co.*, 162 Misc. 416, 295 N. Y. S. 107, 112; *Aberdeen Bindery v. Eastern States Etc. Co.*, 166 Misc. 904, 3 N. Y. S. 2d 419, 423; *Finox Realty Corp. v. Lippman*, 163 Misc. 870, 296 N. Y. S. 945, 949; *J. T. Whalen, Inc. v. Pritzert*, 167 Misc. 471, 3 N. Y. S. 2d 418; *Nispel v. Western Union R.R. Co.*, 64 Ill. 311, 314; *Nixon, Ellison & Co. v. Southwestern Ins. Co.*, 47 Ill. 444, 446; *Kankakee Drainage Dist. v. Commissioners*, 29 Ill. App. 86, 87; *State Bank v. Bell*, 5 Blackf. (Ind.) 127; *Culpeper Natl. Bank v. Tidewater Imp. Co.*, 119 Va. 73, 89 S. E. 118, 120; *Clark v.*

Austin, 340 Mo. 467, 101 S. W. 2d 977, 982; *New Jersey Photo Eng. Co. v. Carl Schonert & Sons*, 96 N. J. Eq. 12, 122 Atl. 307; *Black & White Operating Co. v. Grosbart*, 107 N. J. L. 63, 151 Atl. 630, 633; *State v. Passaic Co. Agr. Soc.*, 54 N. J. L. 260, 23 Atl. 680. See also *Union Pacific Ry. Co. v. Horney*, 5 Kan. 340, 347; *Cary & Co. v. F. E. Satterlee & Co.*, 166 Minn. 507, 208 N. W. 408, 409; *arguendo*, *Osborn v. Bank of United States*, 9 Wheat. (22 U. S.) 738, 830, 6 L. Ed. 204, 226.

As indicated by such authority, the prohibition against laymen acting as attorneys on behalf of corporations is quite universal. No federal question appears to be raised by such prohibition.

Appellant's argument that as a layman he had a constitutional right to act as counsel for a corporation in which he had shares is, of course, directed only at Counts I and II of the complaint. Count IV was an entirely independent transaction involving the bankruptcy proceeding.

IV.

Appellant Was Given His Day in Court and a Speedy Trial.

Appellant, in questions 4 and 5 of his questions presented by appeal, urges that he was deprived of his day in court and denied a speedy trial in violation of the Fourteenth Amendment to the Constitution of the United States. He does not develop these contentions.

The purported deprival of his day in court apparently involved either Count III of the complaint or the introduction into evidence of People's Exhibit 12 [R. T. p. 293, line 24]. Count III was reversed on appeal to the Appellate Department of the Superior Court, for the County of Los Angeles. People's Exhibit 12 was introduced on rebuttal for purpose of impeachment on a most material point. The exhibit and the testimony concerning it [R. T. p. 280, line 6, to p. 281, lines 1-13] indicate that appellant had no financial interest in the corporation in question, which was certainly contrary to appellant's whole theory (then and now) that he was entitled to represent the corporation because he was a part owner [R. T. p. 183, line 21, to p. 199, line 13].

Appellant received a speedy trial. The complaint was filed November 29, 1961. He was arraigned November 30, 1961, and trial was set for December 26, 1961. On such date appellant did not appear and his counsel moved for a continuance, which was denied. A bench warrant issued, appellant appeared, and the cause was then continued to January 11, 1962, on appellant's motion. The case went to trial on such date (pages 1 and 2 of Transcript of Docket of Municipal Court).

V.

The Supreme Court of the United States Should Not Take Jurisdiction to Review a Judgment Where No Opinion Was Delivered by the Highest State Court, and Where Such Judgment Is Sustainable on Non-Federal Grounds.

No opinion was delivered by the Appellate Department of the Superior Court, for Los Angeles County (Jurisdictional Statement, Appx. B).

In *Stembridge v. State of Georgia*, 343 U. S. 541, it was held that, where the highest court of the state delivers no opinion and that it appears the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment.

The judgment of the Appellate Department of the Superior Court, as to appellant's double jeopardy point, could well have rested on the state ground of his failure to plead such defense. The judgment of such court as to whether the California statute prohibiting the unlicensed practice of law is unconstitutionally vague and indefinite, could have rested on appellant's apparent failure to raise the question at the trial level.

Appellant's other points do not appear to raise a federal question.

Appellee urges, therefore, that the appellant presents no substantial question for the decision of this Court; that the judgment sought to be appealed from should be affirmed or the appeal dismissed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
PHILIP E. GREY,
Assistant City Attorney,
WM. E. DORAN,
Deputy City Attorney,
Attorneys for Appellee.

APPENDIX A.

Section 6125, Business and Professions Code of the State of California.

Necessity of active membership in state bar. No person shall practice law in this State unless he is an active member of the State Bar. (Stats. 1939, c. 34, p. 359, sec. 1.)

APPENDIX B.

Section 1016 of the Penal Code of the State of California.

There are five kinds of pleas to an indictment or an information, or to a complaint charging an offense triable in any inferior court:

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged.
4. Once in jeopardy.
5. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged. (Stats. 1951, c. 1674, p. 3843, sec. 81.)

Section 1017 of the Penal Code of the State of California.

Every plea must be made in open court and may be oral or in writing, and must be entered upon the minutes of the court and must be taken down in shorthand by the official reporter if there is one present. The plea, whether oral or in writing, must be in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged, by the judgment of the court of ..... (naming it), rendered at .....(naming the place), on the ....day of ....."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)."

5. If he plead not guilty by reason of insanity: "The defendant pleads that he is not guilty of the offense charged because he was insane at the time that he is alleged to have committed the unlawful act." (Stats. 1951, c. 1674, p. 3843, sec. 82.)